

San Francisco Bay Conservation and Development Commission

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Point Buckler Club, LLC
John Donnelly Sweeney, Registered Agent
171 Sandpiper Drive
Pittsburg, CA 94565

and

John Donnelly Sweeney
171 Sandpiper Drive
Pittsburg, CA 94565

EXECUTIVE DIRECTOR
CEASE AND DESIST ORDER NO.
ECD2016.01

Effective Date: April 22, 2016

Expiration Date: July 21, 2016

Hearing Date: July 21, 2016 at 1:00 p.m.
(See Section V., Notice of Public Hearing)

TO JOHN DONNELLY SWEENEY AND POINT BUCKLER CLUB, LLC:

I. CEASE AND DESIST

Pursuant to my authority under California Public Resources Code Section 29601 and California Government Code Section 66637, I hereby order you, John Donnelly Sweeney and Point Buckler Club, LLC, all of your agents and employees, and any other persons acting in concert with you to cease and desist all activity in violation of the Suisun Marsh Preservation Act (SMPA) and the McAteer-Petris Act (MPA) at Point Buckler Island in Solano County, as described herein. Specifically, you are ordered to:

1. Cease and desist from placing any fill within, or making any substantial change in use of, any area subject to tidal action, or that was subject to tidal action before Mr. Sweeney commenced the unauthorized activities described herein, including marshlands lying between mean high tide and five feet above mean sea level, without securing a permit from the the San Francisco Bay Conservation and Development Commission (Commission or BCDC) as required under Government Code Section 66632(a);
2. Cease and desist from conducting or engaging in any "development" (defined in Public Resources Code Section 29114(a) as including but not being limited to the placement or erection of any solid material or structure; discharge or disposal of any dredged material; grading, removing, dredging, or extraction of any materials; change in the density or intensity of use of land or intensity of use of water; construction, reconstruction, alteration in the size of any structure; and the removal or harvesting of major vegetation other than for agricultural purposes) without securing a marsh development permit from the Commission as required under Public Resources Code Sections 29500 and 29501(a); and
3. Fully comply with requirements of Section III of this order.

II. FINDINGS

This Order is based on the following findings. The administrative record in support of these findings and this Order includes: (1) all documents and other evidence cited herein or attached as exhibits hereto; (2) the attached declaration and the documents cited therein; and (3) all additional documents listed in the Index of Administrative Record attached hereto as Exhibit A. You may review the administrative record at BCDC's offices or obtain copies of any or all documents contained in the record at your expense.

1. Point Buckler Club, LLC is the owner of approximately 51 acres of land at Point Buckler Island (Assessor's Parcel No. 0090-020-010), which is located off the western tip of Simmons Island in the Suisun Marsh, Solano County (the Site). John Donnelly Sweeney (Mr. Sweeney) is a principal of Point Buckler Club, LLC and owned the Site from approximately April 19, 2011, to October 27, 2014, when he conveyed the Site to Point Buckler Club, LLC. Point Buckler Club, LLC and Mr. Sweeney are hereafter jointly referred to as SWEENEY.
2. In 1965, the Legislature enacted the McAteer-Petris Act (MPA), which is codified, as amended, at Government Code Sections 66600-66694. The Site is located in the jurisdiction of the Commission as established by Government Code Section 666610. Specifically, the Site is in the Commission's "San Francisco Bay" jurisdiction as defined in Government Code Section 666610(a). Any person wishing to place fill, to extract materials, or to make any substantial change in use of any water, land, or structure, within the area of the Commission's jurisdiction, including at the Site, is required to obtain a permit from the Commission. Government Code § 66632(a).
3. In 1977, the Legislature enacted the Suisun Marsh Preservation Act (SMPA), which is codified, as amended, at Public Resources Code Sections 29000-29612. The Site is located in the "primary management area" of the "Suisun Marsh," as those terms are defined in Public Resources Code Sections 29102 and 29101, respectively.
4. Any person wishing to perform or undertake any "development," as that term is broadly defined in Public Resources Code Section 29114(a), at the Site is required to obtain a marsh development permit from the Commission, in addition to obtaining any other permit required by law from any local government or from a state, local, or regional agency. Public Resources Code §§ 29500, 29501.
5. The Commission has prepared and adopted the "Suisun Marsh Protection Plan," as that term is defined in Public Resources Code Section 29113(a). In addition, the Commission has certified, the "local protection program," as defined in Public Resources Code Section 29111, consisting of a number of components prepared by or submitted to Solano County or prepared by the Suisun Resource Conservation District ("SRCD"), that meets the requirements of, and implements, the SMPA and the Suisun Marsh Protection Plan at the local level.

6. One component of the certified local protection program is the Suisun Marsh Management Program ("SMMP") prepared by SRCD pursuant to Public Resources Code Sections 29401(d) and 29412.5. The SMMP consists of the following principal elements:
 - a. a general management program;
 - b. individual water management programs for each privately-owned "managed wetland" within the primary management area of the Suisun Marsh;
 - c. enforceable Standards Covering Diking, Flooding, Draining, Filling and Dredging of Tidal Waters, Managed Wetlands and Tidal Marsh Within the Primary Management Area; and
 - d. regulations adopted by SRCD to ensure effective water management on privately-owned lands within the primary management area.

The term "managed wetland" is defined in Public Resources Code Section 29105 to mean "those diked areas in the marsh in which water inflow and outflow is artificially controlled or in which waterfowl food plants are cultivated, or both, to enhance habitat conditions for waterfowl and other water-associated birds, wildlife, or fish...." See also Declaration of Steven Chappell (April 21, 2016), at ¶¶ 7, 9. The Chappell Declaration is attached hereto as Exhibit B.

7. Notwithstanding the otherwise applicable provisions of Public Resources Code Section 29500 regarding the need to obtain a marsh development permit, Public Resources Code Section 29501.5 states that within the primary management area of the Suisun Marsh, no marsh development permit is required for any development specified in the component of the local protection program prepared by SRCD and certified by the Commission.
8. In or about 1984, individual management programs (commonly referred to as individual management plans or IMPs) were developed for each privately-owned managed wetland in the primary management area of the Suisun Marsh, including the Site, and were reviewed by the California Department of Fish and Game (now California Department of Fish and Wildlife or CDFW) and certified by the Commission. Suisun Marsh Protection Program at 34 and 70-71 (map); Chappell Declaration at ¶ 11.
9. The IMP for the Site, entitled "Annie Mason Point Club" (hereafter Annie Mason IMP), states that the club is contained within a single levee surrounded by Grizzly Bay to the north and Suisun Cutoff to the south, and describes two water control structures: (a) a main flood gate on the east side that functions to bring water into the club via a perimeter ditch system; and (b) a structure on the north side used to drain the club into Grizzly Bay. The Annie Mason IMP further states, in a subsection addressing Water Management, Needed Improvements, that is "necessary that the club follows a regular program of water management," and that:

Proper water control necessitates inspection and maintenance of levees, ditches, and water control structures....Levees require frequent inspection and attention to prevent major breaks from occurring.

The Annie Mason IMP also contains a subsection addressing Vegetation Management, Needed Improvements, that discusses removal of undesirable vegetation to provide for the establishment of new vegetation more preferred by waterfowl. See Chappell Declaration at ¶ 11.

10. In September 1989, the owner of the Site at that time, John Taylor, submitted an application to the Commission to place approximately 50,000 cubic yards of dredged material from the Port of Oakland on levees at the Site to improve water control. In October 1989, Commission staff determined that the application was incomplete and requested additional information from the applicant. No additional information was provided to staff, the application was never filed as complete, and no permit was issued by the Commission for this proposed work.
11. On or about January 29, 1990, a Wetlands Maintenance Management Report was prepared that proposed the following work at the Site: (a) clearing ditches, 1,000 cubic yards, approximately 1,200 linear feet; (b) interior levee repair, 2,000 cubic yards, 500 linear feet; and (c) exterior levee repair, 2,000 cubic yards, 750 linear feet. There is no record documenting that this work was commenced or completed. Chappell Declaration at ¶ 14.
12. At all times subsequent to certification of the Annie Mason IMP in 1984, all owners of property within the Suisun Marsh, including the Site, have been subject to certain regulatory requirements imposed by the United States Army Corps of Engineers (USACE) under the Clean Water Act and/or the Rivers and Harbors Act of 1899. These requirements are and typically have been set forth in a series of Regional General Permits (RGPs) issued by the USACE for successive five-year terms. The RGP currently in effect, RGP3 dated July 8, 2013, regulates, among other things: "2) ACTIVITIES ON LEVEES: a. Repair of Interior and Exterior Levees...to repair damage from storms and to counteract subsidence of the levees." Under Section 6, "PERMIT ADMINISTRATION," the current RGP requires property owners who intend to perform repair and other work activities that are regulated by the RGP to prepare and submit to the SRCD a report (called a "work request form") that describes the proposed activities. The RGP gives to the SRCD the responsibility to compile and submit to the USACE the reports that the SRCD receives from property owners. Previous versions of the RGP contained regulatory requirements of similar scope and content. The records of the SRCD since 1994 reveal no reports submitted by any owner of the Site for purposes of compliance with an RGP regarding repair or maintenance of the levees at the Site. Chappell Declaration at ¶¶ 15-16.

13. An aerial photograph dated April 30, 1985, shortly after preparation of the Annie Mason IMP, shows that the levees at the Site were intact at that time, precluding tidal action except via the authorized water control structures, and provided the necessary infrastructure to control water levels at the Site for managed wetlands conditions. In contrast, a series of aerial photographs taken from July 1988 to September 2011 show the progressive levee breaches that connected Bay tides to the interior ditch and channel network, and the reversion of the Site to tidal marsh. The first levee breach (in the north) had occurred by August 1988, and two more breaches (one in the southwest and another in the northeast) had occurred by May 1991. Two more levee breaches (one in the south and another in the northeast) had occurred by August 1993, and two more levee breaches (both in the northwest) had occurred by the Summer 2003. Beginning in or about 1988 with the first levee breach, continuing between 1988 to 2003 with the six additional levee breaches that occurred over this period, and continuing from in or about 2003 to 2011 with all seven levee breaches, these breaches provided daily tidal exchange between the Bay waters and the tidal marsh that comprised the Site, and the interior channels and ditch provided internal tidal circulation throughout the Site. Aerial photographs dated: April 30, 1985; July 14, 1988; August 18, 1988; June 13, 1990; May 28, 1991; August 23, 1993; Summer 2003; October 20, 2003; Summer 2006; April 2011; and September 1, 2011.
14. Beginning no later than August 1988, with the first levee breach, the areas of the Site formerly consisting of managed wetlands began reverting to "tidal marsh," as that term is defined in the SMMP due to: (a) the lack of maintenance of the levees and water control structures at the Site; (b) the constant exposure of the Site to daily tides and the forces of the waves and winds; and (c) the periodic exposure of the Site to storm events. The reversion and persistence of the Site as tidal marsh continued after May 1991 from three levee breaches, after August 1993 from five levee breaches, and after August 2003 from seven levee breaches, which provided daily tidal exchange between the Bay waters and the interior channels and ditch, and provided internal tidal circulation throughout the Site.
15. Mr. Sweeney purchased the Site on or about April 19, 2011. An aerial photograph taken in April 2011, and attached hereto as Exhibit C, shows that at that time the levees at the Site were breached at seven different locations and the entire Site was intersected by countless tidal channels that, together with the remnant interior ditch, provided internal tidal circulation throughout the entire Site. These same conditions are shown in an aerial photograph taken on September 1, 2011.
16. Over an approximately 20-year period before Mr. Sweeney purchased the Site in April 2011: (a) the levees and water control structures at the site were not maintained; (b) the site was subject to tidal action and consisted of tidal marsh, including in the areas interior to the progressively eroded, deteriorated and breached levees; and (c) the Site did not contain managed wetlands as defined in Public Resources Code Section 29105.

For these reasons, when Mr. Sweeney purchased the Site, the Annie Mason IMP no longer applied to the Site and any potential development at the Site was not specified in the SRCD's component of the local protection program. Therefore, at the time Mr. Sweeney purchased the Site, a marsh development permit from the Commission was required, pursuant to Public Resources Code Section 29500-29501, to authorize any "development" (as defined in Public Resources Code Section 29114(a)) at the Site, and a permit was required by the Commission, pursuant to Government Code § 66632(a), to authorize the placement of any fill or to make any substantial change in use of any water, land, or structure at the Site. Chappell Declaration at ¶¶ 17-21.

17. Beginning by no later than May 2012, and without applying for or obtaining a permit from BCDC, Mr. Sweeney began excavating trenches and ditches in tidal marsh, rebuilding eroded levees, and placing fill on tidal marsh to construct new levees at the Site. This work included but may not have been limited to: (a) excavating material from the ditch inside the eroded levees and placing such material on the remnants of the eroded levees in locations where the eroded levees remained; and (b) constructing new levees by placing fill, excavated from the ditch, on tidal marsh and waters of the State inside former levee locations where the former levees had completely eroded and disappeared and had been replaced by tidal marsh. In addition, without applying for or obtaining a permit from BCDC, Mr. Sweeney removed one of the former water control structures from the Site and, in approximately September 2013, replaced a sunken dock located in the southeast portion of the Site with a larger dock at the same location. Declaration of John D. Sweeney in Support of Ex Parte Application, Sonoma County Superior Court Case No. FCS046410 (December 28, 2015), at paragraph 4; Email from Mr. Sweeney to Jim Starr, CDFW, dated November 19, 2014. Aerial photographs or Google Earth images dated May 19, 2012, February 3, 2014, March 24, 2014, May 22, 2014, August 6, 2014, October 29, 2014, and January 29, 2015. Each of these unauthorized activities constituted "development" as defined in Public Resources Code Section 29114, and the rebuilding of eroded levees, construction of new levees, and installation of a replacement dock each constituted placement of fill under Government Code Section 66632(a).
18. On March 19, 2014, while two BCDC staff members and Steve Chappell, Executive Director of SRCD, were touring the Suisun Marsh, one of the locations they visited was Simmons Island, located approximately 100 yards east of the Site across Annie Mason Slough. From the western levee on Simmon Island, directly east of the Site, they observed that a significant amount of heavy machinery was on the Site and that substantial landform alternation (*i.e.*, excavation and redeposit of excavated material) had occurred, which appeared to have as its purpose the construction of a new levee. BCDC staff and Mr. Chappell also observed a floating dock and pier at the southeastern portion of the Site. The levee construction work observed at the Site was a surprise to Mr. Chappell because the Site met the definition of a "tidal wetland" and he knew that work of this nature was clearly subject to the USACE, Regional Water Quality Control

Board, and BCDC permitting requirements. Mr. Chappell knew of his own personal knowledge that: there had been no such permit authorizations; that a "work request form" under the USACE's RGP3 had not been submitted to SRCD or approved by the USACE for the construction activity observed on the Site; and that such a request could not have been authorized by the USACE under the RGP3 for the construction activity observed at the Site. Chappell Declaration at ¶ 17.

19. On or about October 27, 2014, Mr. Sweeney transferred title to the Site to the Point Buckler Club, LCC.
20. Some time in or about 2014, SWEENEY began operating the Site as a "Private Sport and Social Island located in the California Delta. Ideally suited for the Bay Area / Silicon Valley Executives who want to get away and enjoy kiting in a safe and secluded environment without boarding a plane." www.pointbucklerisland.com. See also www.facebook.com/pointbucklerclubVIP.
21. On November 14, 2014, BCDC staff inspected the Site, accompanied by Jim Starr of CDFW, and identified a number of violations of the SMPA and the MPA, including but not limited to:
 - a. During unpermitted rebuilding of the eroded levees and construction of new levees, three major tidal channels were filled, thus removing tidal flow to the interior of the island. Further, it appeared from the extent of the levee construction that SWEENEY was in the process of draining this once tidally active marshland in order to convert the Site to upland.
 - b. Unpermitted levee rebuilding and construction work had been conducted outside the appropriate work windows for the following protected species: Chinook Salmon, Delta Smelt, Clapper Rail, and Salt Marsh Harvest Mouse.
 - c. Unauthorized installation of an approximately 288-square-foot dock on the eastern portion of the Site in Anne Mason Slough, which sometime between the Fall of 2013 and Spring of 2014 was enlarged to roughly 1,400 square feet.
 - d. Unauthorized placement of two mobile army trailers on the northwest side of the Site and one on the southeast side of the Site.
 - e. Unauthorized placement of two shipping containers on the southeast side of the Site.

During the Site inspection, BCDC staff provided Mr. Sweeney with a copy of the Annie Mason IMP because he had previously informed BCDC staff that he did not have a copy of that document and had requested a copy.

22. The unauthorized work SWEENEY performed at the Site from May 2012 to January 29, 2015 is shown in a series of aerial photographs and Google Earth images. The photographs and images show that SWEENEY:
 - a. initiated trench excavation and filling activities by no later than May 2012;
 - b. installed a large dock in Annie Mason Slough and began grading in the southeastern corner of the Site by February 3, 2014;

- c. conducted levee construction and rebuilding and ditch excavation activities along the southern and southwestern portion of the Site, closing two of the tidal breaches, by March 24, 2014;
- d. conducted levee construction and rebuilding and ditch excavation activities in a clockwise direction around to the northeastern portion of the site, closing off the five remaining tidal breaches and cutting off all tidal channel connectivity to the interior of the Site, by August 6, 2014;
- e. completed the final segment of levee construction and rebuilding and ditch excavation activities along the eastern portion of the Site by October 28, 2014; and
- f. excavated three crescent ponds in tidal marsh in the interior of the Site by January 29, 2015.

Aerial photographs or Google Earth images dated: May 19, 2012; February 3, 2014; March 24, 2014; May 22, 2014; August 6, 2014; October 29, 2014; and January 29, 2015.

- 23. On January 30, 2015, BCDC sent a letter to SWEENEY regarding the unauthorized work observed during the November 14, 2014 Site inspection. The letter discussed the regulatory framework governing the Suisun Marsh and, in particular, the Site, including the Suisun Marsh Protection Plan and IMPs, and explained that based on available information, the history of the Site, and the recent Site visit, the Site had never been managed in accordance with the Annie Mason IMP and had long ago reverted to a tidal marsh due to neglect, abandonment, and/or the forces of nature. The letter advised SWEENEY that a marsh development permit from BCDC was required prior to performing any development at the Site, and that any work that could not be retroactively approved through such a permit would likely need to be removed, restoring the Site to tidal marsh. BCDC staff recommended that SWEENEY restore the Site, following BCDC approval of a professionally prepared plan, or begin compiling a marsh development permit application. Furthermore, BCDC staff requested that SWEENEY stop work at the Site. Finally, the letter advised SWEENEY of potential future BCDC enforcement options, including an Executive Director Cease and Desist Order (CDO), a Commission CDO, and Civil Penalty Order.
- 24. On March 25, 2015, counsel for SWEENEY wrote to BCDC questioning the applicability to the Site of the SMPA requirements for a marsh development permit. By letter dated May 7, 2015, BCDC staff once again explained that because conditions at the Site had fundamentally changed as a result of years of neglect, failed attempts at management, and natural forces, the Site had reverted to a tidal marsh and was no longer a managed wetland as defined in the SMPA, and, therefore, the Anne Mason IMP no longer applied to the Site. BCDC staff reaffirmed that given the fundamental change in Site conditions, any future work at the Site requires a marsh development permit. Furthermore, BCDC staff recommended that SWEENEY restore the Site to tidal marsh or begin the marsh development permit application process.
- 25. A Google Earth image dated April 1, 2015 shows that SWEENEY continued to perform unauthorized work at the Site after receiving BCDC's letter dated January 30, 2015 directing that SWEENEY stop work. The referenced image shows new work (since an

aerial photograph taken on January 29, 2015) including, but not limited to: (a) excavating a fourth crescent pond in tidal marsh in the interior of the Site; (b) placing fill in the ditch for a road to cross the ditch at the west side of the Site; (c) placing fill on tidal marsh for a road to the water's edge at the northwestern corner of the Site; (d) mowing vegetation and grading for a road on tidal marsh across the Site; (e) installing containers and trailers on tidal marsh in the western portion of the Site; and (f) installing another trailer or container on the east side of the Site.

26. On or about July 21, 2015, San Francisco Bay Regional Water Quality Control Board (Regional Board) staff provided notice to BCDC and other state and federal agencies of potential violations of state and federal laws protecting wetlands and special status species at the Site. Email from Xavier Fernandez, Regional Board, dated July 21, 2015, with attachments.
27. On July 28, 2015, the Regional Board sent to Point Buckler, LLC a Notice of Violation for Filling Waters of the United States and State at the Site, alleging violations of both the federal Clean Water Act and the California Water Code.
28. On August 11, 2015, BCDC staff met with Mr. Sweeney and his counsel to discuss the violations of the SMPA and MPA at the Site. At that meeting, SWEENEY's counsel offered to provide additional information to BCDC regarding the historic conditions at the Site and Mr. Sweeney's recent activities there. By letter dated August 18, 2015, BCDC staff provided guidance on what the additional information should focus on in order to be useful to staff in determining whether or not to proceed with an enforcement action. In summary, staff suggested that the additional information include: (a) a historical perspective of the inflow and outflow of tidal water at the Site since 1984; (b) a biological Site assessment; (c) documentation of Mr. Sweeney's cultivation of waterfowl food plants at the Site; and (d) any reports submitted by Mr. Sweeney to the SRCD describing any actions which he had taken to implement the Annie Mason IMP. Staff requested that, as discussed at the August 11, 2015 meeting, SWEENEY's counsel provide any additional information to BCDC by no later than October 10, 2015.
29. On September 11, 2015, the Executive Officer of the Regional Board issued Cleanup and Abatement Order No. R2-2015-0038 (Order R2-2015-0038) to Point Buckler LLC, as named Discharger, for unauthorized levee construction activities at the Site. Order R2-2015-0038 found that Point Buckler LLC's "levee construction activities included construction of a levee around the perimeter of the Site resulting in the diking off of the tidal channels located on the northeast, northwest, and southwest portions of the Site," and had adversely impacted tidal marsh vegetation and tidal marshlands that constitute waters of the State and the United States.
30. On October 12, 2015, SWEENEY's newly-retained counsel requested that BCDC provide additional time for SWEENEY to submit information and analysis responsive to BCDC's allegations of unpermitted activities at the Site, which SWEENEY's prior counsel had offered to provide and as discussed in BCDC's August 18, 2015 letter. SWEENEY's counsel indicated that

Sweeney would provide BCDC with copies of submissions to the Regional Board required by Order R2-2015-0038, and suggested that those submissions would provide answers to most of the questions raised by BCDC.

31. On October 21, 2015, representatives of BCDC, the Regional Board, United States Environmental Protection Agency, and USACE inspected the Site, together with Mr. Sweeney and his counsel. The purposes of the inspection were to observe and document Site conditions and obtain a better understanding of: (a) the nature and extent of construction activities performed by SWEENEY; (b) whether the work performed by SWEENEY was within the purview of the USACE RGP3; and (c) the extent of waters of the Bay, the State and the United States and tidal marsh habitat that was adversely impacted by the work performed by SWEENEY. During this Site inspection, BCDC staff observed that SWEENEY had performed additional work since the November 14, 2014 Site inspection including:
 - a. installed a dirt "land bridge" over culverts by placing fill at two locations across the drainage ditch to provide access to portions of the Site;
 - b. constructed a road across the interior of the Site;
 - c. excavated four semi-circular ponds in the interior of the Site;
 - d. installed a new, unauthorized water-control structure in the western portion of the Site;
 - e. moved two storage containers from the northwestern portion of the Site, where they were located during the November 14, 2014, Site inspection, to the interior of the Site and added two additional storage containers;
 - f. installed a goat pen and brought a number of goats to the Site;
 - g. removed, mowed, grazed, and/or flattened tidal marsh vegetation throughout the interior of the Site; and
 - h. planted approximately 14 trees on the Site, all of which had died, apparently due to high salinity levels.
32. On December 17, 2015, BCDC wrote to SWEENEY's counsel and agreed to provide additional time, as requested on October 12, 2015, for SWEENEY to provide information responsive to BCDC's allegations of unpermitted activities at the Site. BCDC extended to February 16, 2016, the deadline for SWEENEY to provide information and analysis responsive to the questions raised in BCDC's letter of August 18, 2015.
33. On January 5, 2016, the Executive Officer of the Regional Board rescinded Order R2-2015-0038 in order to address procedural due process claims asserted by SWEENEY. The rescission was without prejudice to Regional Board staff's ability to propose, or the Regional Board's ability to issue, a Cleanup and Abatement Order and/or other orders or permits covering the subject matter of Order R2-2015-0038.

34. An aerial photograph dated February 10, 2016, and attached hereto as Exhibit D, shows that SWEENEY continued to perform unauthorized work at the Site after receiving BCDC's letter dated January 30, 2015 directing that SWEENEY stop work. The referenced image shows new work (since the Google Earth image dated April 1, 2015) including, but not limited to, installation of two helicopter landing pads and placement of three wind-break platforms, all on tidal marsh.
35. On February 16, 2016, SWEENEY's counsel submitted a letter to BCDC and an enclosed technical report, prepared by Applied Water Resources, entitled Conditions Report at Point Buckler, Response to Cleanup and Abatement Order R2-2015-0038, dated October 16, 2015 ("Conditions Report"), which he indicated, provided some of the information regarding the Site requested by BCDC in its letter dated August 18, 2015. The Conditions Report establishes that the Site was a tidal marsh before SWEENEY began performing unauthorized work there and provides evidence that SWEENEY violated the MPA and SMPA at the Site. According to the Conditions Report:
- a. In 2013, two years after Mr. Sweeney purchased the Site, aerial photographs show that there were eight tidally-influenced channels that bisected the eroded levees and through which tidal water flowed to or toward the interior of the Site.
 - b. "Recent activities at the Island has [sic] resulted in the placement of fill material into waters of the State." Conditions Report at 4. This work involved rebuilding and constructing the exterior levees, which placed fill into sections of the former ditch system and tidal channels.
 - c. SWEENEY constructed over 40% of the existing exterior levee inland of the location of the former eroded levee by placing fill on tidal marsh.
 - d. SWEENEY excavated approximately 68% of the existing ditch, interior of the newly constructed and rebuilt levee, inland of the location of the former ditch, which no longer existed due to erosion of the former levees or had become silted in, and SWEENEY used the excavated soil as a source of fill for constructing and rebuilding the exterior levee.
 - e. SWEENEY excavated two arc-like shaped ponds in late-2014, and had partially dug two more ponds.
 - f. SWEENEY installed two 24-inch diameter steel pipe culverts in and across the new ditch system, over fill, on the eastern and western sides of the Site to allow passage over the ditch.
 - g. "Recent activities at the Island has [sic] resulted in the removal or coverage of vegetation." Conditions Report at 6. SWEENEY removed at least 4.74 acres of tidal marsh vegetation as a result of excavation or filling activities.

- h. SWEENEY disturbed tidal marsh vegetation at the Site by rotary mowing activities that commenced in 2012 and were conducted on the west, north, and southeastern portions of the island. SWEENEY also disturbed tidal marsh vegetation by moving track-mounted machines and rubber tired vehicles across the island.
36. Neither the Conditions Report nor the February 16, 2016 letter from SWEENEY's counsel contain any of the following information requested in BCDC in its August 18, 2015 letter: a biological Site assessment; documentation of cultivation of waterfowl food plants at the Site; and any reports submitted by Mr. Sweeney to the SRCD describing any actions which he had taken to implement the Annie Mason IMP.¹
37. On February 17, 2016, representatives of the Regional Board performed a boat survey with the Solano County Sheriff Marine Patrol around the perimeter of the Site and observed, among other things: (a) recent unauthorized grading on the east side of the Site that appeared to be maintenance or repair to the levee; and (b) placement of two mobile helicopter landing pads. In the Matter of the Inspection at Point Buckler Island, Affidavit for Inspection Warrant (of Benjamin Martin, Regional Board), dated February 19, 2016, at 11 (Affidavit for Inspection Warrant).
38. On March 4, 2016, representatives of the Regional Board, escorted by the Solano County Sheriff's Department, inspected the Site pursuant to an Inspection Warrant issued by Solano County Superior Court. The inspection consisted of conducting: (a) a topographic survey of the Site; (b) a forensic wetland survey designed to identify and characterize the extent of wetlands and other waters of the State and current conditions at the Site; and (c) in situ water quality measurements. Affidavit for Inspection Warrant, at 5. During this Site inspection, Regional Board staff observed that SWEENEY had performed additional work since the October 21, 2015 Site inspection including: (a) three white flat-rack containers were newly installed around two green closed freight containers to create an enclosure; (b) four flat-rack containers (two red and two blue), painted with a yellow "H," were newly installed as two helicopter landing pads, one landing pad on the eastern side and one on the western side of the Site; (c) a green gate and posts were newly installed across the ditch crossing on the eastern side of the Site; and (d) tidal marsh vegetation was mowed throughout an approximately 1.5-acre area on the eastern side of the Site (this area had not been mowed on October 21, 2015). In addition, Regional Board staff observed that the water in the ditch was bright green in color, and notably different in color compared to the water in Suisun Bay, indicative of stagnant and eutrophic conditions, in contrast to observation during the October 21, 2015 Site inspection when the water in the ditch was greenish brown in color and not noticeably different in color in comparison to the water in Suisun Bay. Regional Board, Inspection Report (April 19, 2016), Exhibit A, at A-2 to A-3.

¹ In his transmittal letter, SWEENEY's counsel asserted that the statutory exemption from the requirement to obtain a marsh development permit (Pub. Resources Code § 29501.5) turns on the existence of a certified IMP and suggested that it was irrelevant whether the Site was a managed wetland or a tidal marsh. However, as a component of SRCD's local protection program, an IMP may be prepared only for a "managed wetland in private ownership within the primary management area." Pub. Resources Code § 29412.5; SMMP at 23.

39. Pursuant to Government Code Section 66637(a) and Public Resources Code Section 29601, when the Executive Director determines that any person has undertaken, or is threatening to undertake, any activity that may require a permit or a marsh development permit from the Commission without securing such a permit, the Executive Director may issue an order directing that person to cease and desist. The order issued by the Executive Director may by subject to such terms and conditions may determine are necessary to ensure compliance with the MPA and SMPA, including the immediate removal of any fill or other material where that removal is necessary to avoid irreparable injury to any area within the Commission's jurisdiction.
40. SWEENEY has violated and continues to violate the MPA by conducting the unpermitted activities at the Site as described herein, including but not limited to:
- a. Placing fill in waters of San Francisco Bay, including tidal marsh, by constructing and rebuilding levees, excavating ditches and four crescent shaped ponds, installing a new dock in Anne Mason Slough, constructing roads, and placing numerous containers, trailers, and other structures and two helipads on tidal marsh; and
 - b. Making substantial changes in the use of water, land, or structures within the area of the Commission's jurisdiction by: (1) closing all the tidal breaches that existed in 2011 when Mr. Sweeney purchased the Site and thereby cutting off all tidal activity to the interior of the Site; (2) installing a new water control structure in the western portion of the Site; (3) draining the Site to further alter the pre-existing tidal marsh hydrology; (4) removing or destroying tidal marsh vegetation by the placement of fill, excavation activities, mowing activities, drainage activities, and bringing goats to the Site and allowing those goats to graze on the tidal marsh vegetation; (5) installing numerous trailers and containers and two mobile helipads at the Site; and (6) developing and operating the Site for intensive water-oriented recreational uses including but not necessarily limited to kite-boarding.
41. SWEENEY has violated and continues to violate the SMPA by conducting unpermitted development at the Site as described herein, including but not limited to: (a) placing fill in waters of San Francisco Bay, including tidal marsh, by constructing and rebuilding levees; (b) excavating ditches and four crescent shaped ponds; (c) installing a new water control structure in the western portion of the Site; (d) installing a new dock in Anne Mason Slough; (e) constructing roads; (f) placing numerous containers, trailers and other structures and two mobile helipads on tidal marsh; (g) removing or destroying tidal marsh vegetation by the excavation activities, mowing activities, and bringing goats to the Site and allowing those goats to graze on the tidal marsh vegetation; and (h) developing and operating the Site for intensive water-oriented recreational uses including but not necessarily limited to kiting.

42. For all the reasons discussed in Findings ¶¶ 9 through 16, above, the Annie Mason IMP did not apply to the Site when Mr. Sweeney purchased the Site in April 2011. However, even assuming the Annie Mason IMP continued to apply to the Site in April 2011 (which it did not), none of the extensive development activities conducted by SWEENEY at the Site, as described herein and summarized in Finding ¶ 41, above, are specified in the Annie Mason IMP or the component of the local protection program prepared by SRCD. Therefore, SWEENEY was required to obtain a permit from the Commission, pursuant to Government Code Section 66632(a), and marsh development permit from the Commission, pursuant to Public Resources Code Section 29500-29501, to authorize the placement of fill, a substantial change in use, or any development at the Site. Thus, even if the Annie Mason IMP continued to apply to the Site in April 2011 (which it did not), SWEENEY has violated and continues to violate the MPA and SMPA by conducting unpermitted activities at the Site as described herein and as summarized in Findings ¶¶ 40 and 41, respectively.

III. Conditions

1. Mr. Sweeney and Point Buckler Club, LLC must jointly apply for and obtain a permit from the Commission prior to any and all placement of fill, substantial change in use, or development activities that they, or either of them, propose to undertake or conduct at the Site after the date of this order. The application must be prepared in compliance with the Commission's regulations governing major permits. See 14 C.C.R. §§ 10300-10316.
2. Within sixty (60) days of the date of this order, or by no later than June 21, 2016, Mr. Sweeney and Point Buckler Club, LLC must jointly apply for a permit to request authorization from the Commission for the placement of fill, substantial change in use, and/or development activities that they, or either of them, have conducted or performed at the Site at any time from April 19, 2011 through the date of this order, as described herein. The permit application shall include a proposed plan and schedule to restore tidal action to and tidal marsh vegetation at the Site in a manner consistent with SWEENEY'S proposed uses of the Site for recreational or other purposes. The application must be prepared in compliance with the Commission's regulations governing major permits. See 14 C.C.R. §§ 10300-10316.
3. SWEENEY must cease and desist from any further actions that would damage or destroy marsh vegetation at the Site, including mowing vegetation, discing soil or vegetation, or grazing goats at the Site.
4. SWEENEY must cease and desist from any further actions that would drain surface water or groundwater from the Site or otherwise further alter the hydrology of the Site.

IV. Terms

1. Under Government Code Section 66641 and Public Resources Code Section 29601, any person who intentionally or negligently violates any cease and desist order issued by the Commission's Executive Director may be liable civilly in a sum of up to \$6,000 for each day in which such violation persists. In addition, upon the failure of any person to comply with any cease and desist order issued by the Commission's Executive Director, and upon the request of the Commission, the Attorney General of the State of California may petition the superior court for the issuance of a preliminary or permanent injunction, or both, restraining the person or persons from continuing any activity in violation of the cease and desist order.
2. This order does not affect any duties, rights, or obligations under private agreements or under regulations of other public bodies.
3. Mr. Sweeney and Point Buckler Club, LLC must conform strictly to this order.
4. This order does not constitute a recognition of property rights.
5. This order is effective upon issuance thereof, on April 22, 2016, and shall become null and void ninety (90) days after issuance, on July 21, 2016.

V. Notice of Public Hearing Before the Commission

The Executive Director has scheduled a public hearing to be held on July 21, 2016, at 1:00 p.m., or as soon thereafter as the matter may be heard, on a cease and desist order proposed to be issued by the Commission concerning the same activities described in this Executive Director's Cease and Desist Order. The public hearing before the Commission will be held at the Port of San Francisco Board Room, Ferry Building, Second Floor, San Francisco, California, 94111, at Commission's regularly scheduled public meeting on July 21, 2016 at 1:00 p.m.

VI. Opportunity for Judicial Review

Under Government Code Section 66639 and Public Resources Code Section 29601, within thirty (30) days after service of a copy of a cease and desist order issued by the Commission's Executive Director, any aggrieved party may file with the superior court a petition for writ of mandate for review of the order pursuant to Section 1094.5 of the Code of Civil Procedure. Failure to file such an action shall not preclude a party from challenging the reasonableness and validity of the order in any judicial proceedings brought to enforce the order or for other civil remedies.

DATED: April 22, 2016



LAWRENCE J. GOLDZBAND

Executive Director

San Francisco Bay Conservation and
Development Commission

List of Exhibits

Exhibit A: Index of Administrative Record

Exhibit B: Declaration of Steven Chappell, dated April 21, 2016.

Exhibit C: Aerial photograph dated April 2011

Exhibit D: Aerial photograph dated February 10, 2016

Executive Director Cease and Desist Order No. EDC2016.001
Index of Administrative Record

Document Description	Date
Suisun Marsh Protection Plan	Dec-76
Suisun Marsh Management Program	Sep-80
Annie Mason Point Club Management Plan	11/15/84
Annie Mason Point Club Management Plan and Supplemental Materials	11/15/1984 - 1/29/1990
Letter from SRCD to Mr. James Taylor re: DWR Pump Facility	9/13/88
Application for BCDC Marsh Development Permit	9/18/89
BCDC Response to Application for BCDC Marsh Development Permit	10/12/89
SRCD Wetlands Maintenance Management Report	1/29/90
Department of the Army, Regional General Permit 3	7/8/13
Email from Mr. John Sweeney to Jim Starr, CDFW	11/19/14
BCDC Letter to Mr. John Sweeney re: Point Buckler Island Unauthorized Project, Suisun Marsh	1/30/15
Letter from Miller Starr Regalia to BCDC re: Point Buckler, LLC; Performance of Maintenance Activities Pursuant to Annie Mason Point Club Individual Management Plan, Club No. 801	3/25/15
BCDC Letter to Miller Starr Regalia re: Point Buckler Island Unauthorized Project, Suisun Marsh	5/7/15
Regional Board Notice to BCDC and other agencies re: Potential Violation for Unauthorized Diking of Suisun Tidal Marsh at Point Buckler Island	7/21/15
Regional Board Letter to Mr. John Sweeney re: Notice of Violation for Filling Waters of the United States and State, Point Buckler Island in the Suisun Marsh, Solano County	7/28/15
BCDC Letter to Miller Starr Regalia re: Point Buckler Island (BCDC Enforcement File No. ER2012.038)	8/18/15
Regional Board to Mr. John Sweeney re: Cleanup and Abatement Order No. R2-2015-0038 for Unauthorized Levee Construction Activities at Point Buckler Island in the Suisun Marsh, Solano County	9/11/15
Letter from Briscoe Ivester and Bazel, LLP to BCDC re: Notice of Replacement of Counsel	10/12/15

EXHIBIT A

Document Description	Date
Applied Water Resources, Conditions Report at Point Buckler, Response to Cleanup and Abatement Order R2-2015-0038	10/16/15
BCDC Letter to Briscoe Ivester and Bazel re: Point Buckler Island; BCDC Enforcement File No. ER2012.038 (Pt. Buckler, LLC; John Sweeney, Principal)	12/17/15
Declaration of John D. Sweeney in Support of Ex Parte Application	12/28/15
Regional Board Letter to Mr. John Sweeney re: Recission of Cleanup and Abatement Order No. R2-2015-0038 for Point Buckler Island, LLC	1/5/16
Letter from Briscoe Ivester and Bazel, LLP to BCDC re: Point Buckler Island; BCDC Enforcement File No. ER2012.038	2/16/16
In the Matter of the Inspection at Point Buckler Island, Affidavit for Inspection Warrant	2/19/16
Solano County Inspection Warrant	2/19/16
Regional Board Inspection Report	2/19/16
Declaration of Steven Chappell	4/21/16
Grant Deed	7/27/04
Grant Deed	4/19/11
Grant Deed	10/27/14
Business Entity Detail for Point Buckler Club, LLC Showing Sweeney As Registered Agent	2/19/16
Property Detail Report for Point Buckler Club, LLC	3/7/16
Screenshot of Point Buckler Website	
Screenshot of Point Buckler Facebook Page	
Aerial Photos or Google Earth Images	4/30/1985, 7/14/1988, 8/18/1988, 6/13/1990, 5/28/1991, 8/23/1993, Summer 2003, Summer 2003 (annotated), 10/20/2003, Summer 2006, April 2011, April 2011 (annotated), 9/1/2011, 5/19/2012, 2/3/2014, 3/24/2014, 5/22/2014, 8/6/2014, 10/29/2014, 1/29/2015, 4/1/2015, 2/10/2016

DECLARATION OF STEVEN CHAPPELL

I, Steven Chappell, declare as follows:

1. I am the Executive Director of the Suisun Resource Conservation District ("SRCD"). I have been employed by the SRCD since 1994 and have held the position of Executive Director since 1998.
2. The Suisun Soil Conservation District ("SSCD") was originally created in 1963. In 1971 the SSCD became the SRCD under the expanded powers of Division 9 of the Public Resource Code ("PRC").
3. In 1974, the Legislature enacted the Nejedly-Bagley-Z'berg Suisun Marsh Preservation Act of 1974 which required the San Francisco Bay Conservation and Development Commission ("BCDC") to prepare and submit to the Governor and Legislature on or before December 1, 1976, a Suisun Marsh Protection Plan ("SMPP").
4. In December, 1976, the BCDC, in collaboration with the California Dept. of Fish and Wildlife, issued the SMPP, as defined in Section 29113(a) of the Suisun Marsh Preservation Act (PRC §§ 29000 – 29612; "SMPA"). In Part III, "Regulation Recommendations: 2. Water Management District," the SMPP recommended that the SRCD should be empowered to "regulate water management practices at managed wetlands controlled by privately-owned duck clubs." Thereafter, in 1977, the Legislature empowered the SRCD to fulfill this responsibility through the enactment of PRC Sections 9960-9963 as part of the same law (Ch. 1155) that enacted the SMPA. PRC § 9962(a) states that the SRCD "shall have primary local responsibility for regulating and improving water management practices on privately owned lands within the primary management area ["PMA"] of the Suisun Marsh in conformity with [the SMPA] and the SMPP."
5. The area over which the SRCD exercises its statutory responsibility encompasses 115,000 acres in the Suisun Marsh, as that term is defined in Section 29101 of the SMPA, which is comprised of approximately of 52,000 acres of managed wetlands, 6,000 acres of unmanaged tidal wetlands, 30,000 acres of bays and sloughs, and 27,000 acres of upland grasslands.
6. In Part II, "Findings and Policies: Environment" Finding 4 and "Land Use and Marsh Management" Finding 1 of the SMPP states that: "Tidal marsh is an important habitat for many wildlife species, including the endangered salt marsh harvest mouse and the Suisun shrew. Tidal marshes also contribute to the maintenance of water quality in the SF Bay." "Land Use and Marsh Management" Policy 3 of the SMPP states that: "The tidal marshes in the PMA should be preserved."

Exhibit B

7. Section 29401(d) of the SMPA requires the SRCD to prepare, as a component of the "Local Protection Program" ("LPP") mandated by the SMPA, "a management program...designed to preserve, protect, and enhance the plant and wildlife communities within the PMA of the [Suisun] marsh, including...enforceable standards for diking, flooding, draining, filling, and dredging of sloughs, managed wetlands, and marshes." The SRCD prepared the Suisun Marsh Management Program ("SMMP") to carry out this directive. The SMMP consists of the following principal elements: (1) a general management program; (2) pursuant to section 29412.5 of the SMPA, individual water management programs ("IMPs") for each privately owned "managed wetland" within the PMA of the Suisun Marsh; (3) pursuant to section 29401(d) of the SMPA, enforceable standards covering diking, flooding, draining, filling and dredging of tidal waters, managed wetlands and tidal marsh within the primary management area; and (4) pursuant to section 9962(b) of the PRC, regulations adopted by SRCD to ensure effective water management on privately owned lands within the PMA. Pursuant to Section 29415 of the SMPA, in 1980 the BCDC certified the SMMP as consistent with the provisions of the SMPA and the SMPP. The SMMP notes at Section II.C.1 of Part 1 that "the policies of the SMPP prohibit future conversion of tidal marsh or open water areas to managed wetland or agricultural status."
8. In Exhibit C ("Standards Covering Diking, Flooding, Draining, Filling and Dredging of Tidal Waters, Managed Wetlands, and Tidal Marsh"), Section III ("Purpose"), the SMMP states that one of the principal goals of the standards set forth in Ex. C is "minimizing activities in tidal marshes and waters." The standards contained in Ex. C, Section VI ("Specific Principals and Standards") for the activities specified in the title of Ex. C vary depending on the location of the activity in either A) tidal waters, B) managed wetlands, or C) tidal marshes.
9. In Section II of Ex. C the SMMP defines the term "managed wetland" to mean "leveed areas...in which water inflow and outflow is artificially controlled, or in which waterfowl food plants are cultivated, or both, to enhance habitat conditions for waterfowl and other water-associated birds and wildlife." As such, the SMMP's definition of the term "managed wetland" is substantially identical to the definition of that term that is contained in Section 29105 of the SMPA. This same section of Ex. C of the SMMP defines the term "tidal marsh" to mean "vegetated areas...which are subject to daily tidal action."
10. In Section II.C.1 ("Individual Management Programs: Program Financing: Capital Improvements") of Part 2 ("Implementation"), the SMMP notes that "the adequacy of the water management facilities on the individual private ownerships varies tremendously." The SMMP further observes that: "it is evident that a substantial number of improvements are still necessary before all ownerships have adequate facilities."

11. The Soil Conservation Service ("SCS") of the US Dept. of Agriculture prepared an IMP for each of the privately owned managed wetlands in the Suisun Marsh. One of the "managed wetlands" for which the SCS prepared an IMP is the Annie Mason Point Club ("AMPC"), Club #801. The AMPC is located on Pt. Buckler Island ("the Site"), which is located within the PMA of the Suisun Marsh off the western tip of Simmons Island. In a Section entitled "Club Improvements: Water Management: Needed Improvements, the AMPC IMP emphasizes that: "Proper water control necessitates inspection and maintenance of levees, ditches, and water control structures" and "Levees require frequent inspection and attention to prevent major breaks from occurring."
12. In a "Plan of Protection for the Suisun Marsh" ("POP") completed in February, 1984, by the Cal. Dept. of Water Resources ("CDWR"), the CDWR states, at p. 103, in connection with a proposal for the CDWR to provide a water pump to the AMPC, that: "Levees about Annie Mason Island are not now in good repair. The pumping equipment will be...installed when the landowner has improved the island's levee system to provide adequate protection of the island." Additionally, on September 13th, 1988, the SRCD sent James Taylor, the AMPC landowner at the time, a letter noting that "one of the conditions of this installation [of a pump facility by CDWR] is that your exterior levee system be intact and up to standards." The letter requested information, "if the requisite work (levee repairs) has been done, and if not, when completion can be expected." The landowner never responded to this SRCD inquiry and to SRCD's knowledge, CDWR has never installed this pump due to the failure of the AMPC exterior levee integrity and the landowner's continued inability to artificially control the inflow and outflow of water at AMPC.
13. Notwithstanding the foregoing findings by the CDWR, the AMPC IMP in the "Summary" section contains a "report" by the "club" that "it now has the water control structures and tight levees necessary for proper water management."
14. On January 29, 1990, a "Wetlands Maintenance Management Report" was prepared which identified 11 locations along approximately 2,450 linear feet of the levee protecting the Site as being in need of interior and exterior repair work. There is no evidence that this needed repair work was ever completed or even undertaken
15. Since 1977 and thus at all times subsequent to the initial certification of the AMPC IMP by the BCDC in 1984, all owners of land within the Suisun Marsh, including but not limited to the Site, have been subject to additional regulatory requirements imposed by the US Army Corps of Engineers ("USACE") under the Clean Water Act and the Rivers and Harbors Act of 1899. These requirements and permitted scope of work defined as a set of discrete authorized maintenance activities have been set forth in a series of Regional General Permit 3's ("RGP3"). The RGP3's authorize the SRCD as co-permittee to "represent" Suisun Marsh landowners with respect to managed wetlands maintenance activities that said

landowners have undertaken or desire to undertake in the Suisun Marsh. During brief periods of time during which a RGP3 has not been in effect the SRCD has performed a similar function under an applicable USACE Nationwide Permit. The RGP3 has typically been issued serially by the USACE for successive 5 year terms. The RGP3 currently in effect, dated July 8, 2013, regulates, among other things, "2) ACTIVITIES ON LEVEES: a. Repair of Interior and Exterior Levees...to repair damage from storms and to counteract subsidence of the levees." Previous versions of the RGP3 contained regulatory requirements of similar scope and content. Under Section 6, "PERMIT ADMINISTRATION," the RGP 3 requires landowners in the Suisun Marsh who intend to perform repair and other work activities that are regulated by the RGP3 to prepare and submit to the SRCD a report (called a "work request form") that describes the proposed activities. The RGP3 gives to the SRCD the responsibility to compile and forward to the USACE the reports that landowners submit to the SRCD, for USACE review and authorization.

16. Since 1994, the records of the SRCD reveal no reports for purposes of compliance with an RGP3 or other evidence of any action on the part of the owners of the Site to maintain the levees and other water control structures on the Site as called for by the AMPC IMP. Due to the complete absence for a period in excess of 20 years of any repair and maintenance work on the exterior levee on the AMPC it is my professional judgment that it is not physically possible for a levee subject to such a lengthy period of inactivity, neglect, and numerous storm damage flooding events to retain the ability to control the inflow and outflow of tidal waters into and from the area that the levee had been originally constructed to protect. As a consequence of this inaction, the levees on the Site were allowed to deteriorate to the point that, when Mr. Sweeney purchased the Site, they no longer controlled the inflow and outflow of tidal water from the Site. As a result the hydrological status of the Site since 1994 was not that of "managed wetland," but rather that of a "tidal marsh", as those terms are defined in Section II of Ex. C of the SMMP. Thus, the standards for "diking, flooding, draining, filling, and dredging" contained in Ex. C of the SMMP that were applicable to the AMPC were those for a "tidal marsh," not those for a "managed wetland."
17. On March 19, 2014, I accompanied Joe LaClair and Cody Aichele-Rothman of the BCDC on a tour of the Suisun Marsh, which included a number of private duck clubs located in the Suisun Marsh. One of the clubs we visited was Club #802 (Rich Island). The Site is located a short distance (approximately 100 yards) across the Annie Mason Slough from Club #802. While we were present on Club #802, I personally observed a significant amount of heavy machinery consisting of a crane, a bulldozer, and other machinery on the Site. I also observed on the Site a substantial amount of landform alteration, i.e., excavation and redeposit of excavated material. The work appeared to have as its purpose the construction of a new exterior levee on the Site. Other nearby landowners had reported this activity to the SRCD, but it came as a surprise to me because, as stated above in

paragraph 15 and 16, any work of this nature on a site that met the definition of a "tidal marsh" in the SMMP was clearly subject to the requirements of the USACE, RWQCB, and BCDC permitting authority. Based upon my own personal knowledge that there had been no such permit authorization or request under the RGP3, nor could it have been authorizable by the USACE, for the construction activity we observed on the Site on March 19.

18. In Section VI.C.1 ("Specific Principles and Standards: Tidal Marshes: Diking") of Ex. C, the SMMP prohibits "diking of tidal marsh areas except in conformance with the findings of the SMPP and the provisions of a certified IMP...." Similarly, Section VI.C.2 ("Specific Principles and Standards: Tidal Marshes: Flooding and Draining") of Ex. C of the SMPP requires that "activities that would affect the natural daily flooding and draining of existing tidal marshes...be undertaken only in conformance with the findings of the SMPP and the provisions of a certified IMP...."
19. As noted above in Paragraph 11 of this declaration, the AMPC IMP authorizes the "inspection and maintenance" of existing levees on the AMPC property. It does not authorize the construction of any new levee to replace any levee that may previously have existed on the Site but which has functionally ceased to exist as a result of neglect and lack of attention. Thus the work Mr. Sweeney has performed in the form of new exterior levee construction is not authorized by, or in conformity with, the provisions of the certified AMPC IMP. Most notably, the AMPC IMP does not authorize any improvements or other work to occur in any area of the Site that meets the definition of a "tidal marsh," as that term is defined in Section II of Ex. C of the SMMP.
20. Accordingly, the construction by Mr. Sweeney of a new perimeter exterior levee on the Site in 2014 was inconsistent with both the findings of the SMPP (as quoted above in Paragraph 6 of this declaration) and with the provisions of the AMPC IMP.
21. Under Ex. C of the SMMP if the "diking of tidal marsh areas" or the obstruction of "the natural daily flooding and draining of existing tidal marshes" that are not "in conformance with [either] the findings of the SMPP [or] the provisions of a certified IMP" are only allowed if such activities occur "with the permission of the appropriate permitting authorities" such as the BCDC.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is signed at

Delano, CA on April 21, 2016.


Steven Chappell

April 2011



EXHIBIT C

2/10/2016

